

**2002 ENVIRONMENTAL NEGOTIATIONS COMPETITION  
CONFIDENTIAL INSTRUCTIONS FOR ORCA ATTORNEYS  
ROUND 2**

ORCA knows that the County has no obligation to do a Countywide dairy EIR. The proposal has advantages for both ORCA and the County. For ORCA, it will allow public input into a Countywide issue and, for the first time, require consideration of impacts on a much greater scale, with the potential that such a thorough process could result in less haphazard land use decisions. The County could avoid at least some challenges to site specific EIRs and allow dairies to proceed more quickly.

With respect to two of the outstanding issues, ORCA has the upper hand and has no intention of letting it go. ORCA believes that the Mendoza dairy requires a site-specific EIR in the absence of a Countywide EIR. Therefore, it will not agree to allow the Mendoza dairy to proceed under a negative declaration until the completion of the Countywide EIR. The County can do a Mendoza EIR if it wishes to proceed with that dairy. In addition, ORCA will not agree to a shortened circulation or comment period for any EIR. It believes that public review provided for the EIR is already insufficient. ORCA will not compromise on these points.

ORCA recognizes that the County does not need ORCA's agreement to proceed with a Countywide EIR. The County can proceed with the EIR, with whatever content that it sees fit, and leave it to ORCA to review the document, comment on it, and determine whether to sue once the EIR becomes final. There may be two exceptions to this. First, Obergene is a non-attainment area for NOx and particulates, so the County must pay close attention to air impacts. Second, many of the potential locations for dairies in the county are in areas with endangered species. ORCA could pursue litigation under the Clean Air Act or the federal or state Endangered Species Act if the County takes insufficient actions. ORCA, therefore, wants to get specific assurances of full evaluation of these impacts in this negotiation. In addition, ORCA, for its part, very much wants to establish the precedent of a worker health and safety study and an environmental justice study, in which the County considers the impacts of dairies on communities of color and low income communities. ORCA hopes that its attorneys will come up with some supporting authority for pursuing these studies in the EIR.

ORCA does not have much to offer the County in exchange for the two specific studies (in addition to other appropriate impact studies determined by the County). It will not give up its right to challenge the EIR or any proposed mitigation, and it will, in theory, only drop its Mendoza lawsuit if the County completes its countywide EIR. The County, in ORCA's view, must do either the Mendoza EIR or a Countywide EIR. Litigating the issue (with respect to Mendoza) will not help the County and simply generate litigation costs. These are significant costs for the County. On the other hand, ORCA does not have the money to fund a drawn-out litigation. A full-scale effort in the Mendoza case could bankrupt ORCA. In addition, while ORCA seeks attorneys fees of \$150,000, based on a high-end estimate of \$75,000 in actual fees and a multiplier of 2, *see* Code Civ. Pro. § 1021.5; *Press v. Lucky Stores* (1983) 34 Cal.3d 311, 312; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 624-26, ORCA recognizes that its fee demand is inflated. If it gets the studies it wants, it will accept no less than \$10,000 in costs and \$15,000 in fees, with the attorneys having a very significant interest in obtaining more. If ORCA can obtain more than \$40,000, the attorneys will split a portion of the recovery (for costs) with ORCA. ORCA can then fund further activities, including participation in the County-wide EIR process. ORCA could accept "fees and costs" without designating a specific amount for costs.

ORCA should be prepared to present a settlement proposal to get discussions moving, which should include the need for a Countywide EIR, a position on the Mendoza EIR and the timing of the Countywide EIR, the inclusion and extent of four studies (along with all other relevant studies): air, biological assessment, worker health, and environmental justice), and costs and attorneys fees.